

NTSB Order No. EA-4897

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 18th day of May, 2001

Respondent .

Docket SE-16263

The Administrator has appealed from the oral initial decision Administrative Law Judge William R. Mullins rendered in this proceeding on April 17, 2001, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge reversed an emergency order of the Administrator revoking the respondent's mechanic certificate for his alleged violation of section

7362

43.12(a)(1) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 43).² For the reasons discussed below, the appeal will be denied.³

The Administrator's March 13, 2001 Emergency Order of Revocation alleges, among other things, the following facts and circumstances concerning the respondent:

1. You are now, and at all times mentioned herein were, the holder of Mechanic Certificate No. 319423843, with Airframe and Powerplant Ratings.
2. At the times mentioned herein, you held the positions of Director of Quality Control or Director of Maintenance for ProAir, Inc., an air carrier certificated under Part 121 of the Federal Aviation Regulations.
3. In February of 2000, civil aircraft N461PR, a Boeing 737 operated by ProAir, was undergoing a "C" check at TIMCO, Inc., a repair station in Winston-Salem, North Carolina.
4. One of the inspections included in the "C" check was a wear check of the external power receptacle pins, using a "Go-No-Go" gage [sic].
5. On or about February 7, 2000, a TIMCO mechanic conducting the "Go-No-Go" test found that one of the pins on the receptacle failed the test, and he reported that failure to TIMCO's lead avionics inspector.
6. TIMCO's lead avionics inspector, after observing the mechanic perform the test again, confirmed the failure of the pin to pass the test, and made an entry on a TIMCO non routine form, "External Power Receptacle Failed the Go-No-Go check."

²FAR section 43.12(a)(1) provides as follows:

§ 43.12 Maintenance records: Falsification, reproduction, or alteration.

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false entry in any record, or report that is required to be made, kept, or used to show compliance with any requirement under this part....

³The respondent has filed a reply opposing the appeal.

7. On or about February 9, 2000, the TIMCO lead avionics inspector performed the same "Go-No-Go" test again, in your presence, demonstrating to you that one of the pins on the external power receptacle failed the test.
8. On February 9, 2000, you made an entry on the same TIMCO non-routine form, stating, "Inspected - found good for continued use", and "(Note: LWR small pin tip worn only)."
9. The entry described in paragraph 7 [sic, 8] was fraudulent or intentionally false, in that you knew that one of the pins on the external power receptacle on N461PR had in fact failed the "Go-No-Go" test and was not good for continued use.
10. You made a false entry on a record that was required to be kept to show compliance with the requirements of Section 43.9(b) of the Federal Aviation Regulations.

The law judge found that the Administrator's evidence did not establish that respondent intended to falsify the referenced maintenance record. Her arguments on appeal do not justify disturbing that finding, which we believe is fully consistent with the record.

The Administrator's charge against the respondent is predicated on the rationale that he must have known that the external power receptacle should be replaced if the applicable go-no-go gauge, a device used to determine if one or more of the receptacle's six pins was excessively worn, would slide even part way down a pin. Assuming, arguendo, that the Administrator is correct in her belief that if the gauge fits on a pin *at all* the pin is bad, her position is not one that finds unambiguous support in the instructions in the relevant manual for using the gauge. Moreover, there is ample, credible mechanic testimony in the record for the interpretation, to which respondent

subscribed, that when the manual says the pin is bad if the gauge fits "over" it or can be "installed" on a pin, it means the pin is bad only if the gauge slides all the way to the base of the pin. Although the law judge did not share this interpretation of the manual, he was persuaded that the respondent so believed, and that that belief, however mistaken it may have been, was sufficient to preclude a finding of any intent to falsify the maintenance task card. We agree.

The Administrator's various contentions about whose evidence, testimonial and otherwise, was entitled to more weight on the question of how the gauge should properly be used does not compel an adverse judgment on the validity of the law judge's acceptance, as a matter of credibility, of the respondent's account as to his understanding of how the tool identified a part that was no longer serviceable. The law judge could reasonably find that the respondent was simply wrong about what the go-no-go gauge revealed and was not obligated, as the Administrator appears to contend, to conclude that the respondent must have been lying about what it meant if the tool fitted just part way down a pin. Honest mechanics can make mistakes even when the directions are clear. The possibility of error is obviously greater when, as here, the directions either admit of multiple interpretations or do not foreclose them.

In sum, we find no error in the law judge's reversal of the revocation order. He correctly concluded, in our judgment, that the respondent had not been shown to have had the intent to

mislead or deceive anyone with his maintenance entry. We share that conclusion, particularly in the context of the clarifying note the respondent included with his sign off. While respondent, assuming the Administrator is correct as to the use of the go-no-go gauge in this instance, may not have appreciated the fact that a pin must be deemed bad even if the gauge did not, with the application of appropriate force, slide all the way to the receptacle's base, his written comment that the tip of the lower small pin was worn accurately described the precise deficiency that the gauge's partial installation on that pin reflected. More to the point, it seems to us that respondent's note rather conclusively establishes, at the most, that his understanding of the gauge was considerably different from the Administrator's mechanic witnesses. In these circumstances, we fail to perceive how the respondent's possibly deficient judgment as to whether this part's minor wear on one of six pins precluded its further use could reasonably or fairly have been seen to raise an issue respecting falsification.⁴

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied; and
2. The initial decision is affirmed.

CARMODY, Acting Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁴Although it is of no direct decisional significance here, the Administrator does not dispute the respondent's contentions that the allegedly deficient part has passed subsequent inspections, and is still being used on the same aircraft, some 15 months after the respondent cleared it.